

# Regulatory Notice

## 25-08

## Business Development Companies

### FINRA Adopts Exemption From FINRA Rules 5130 and 5131 for Business Development Companies

Effective Date: July 23, 2025

#### Summary

FINRA has adopted amendments to exempt business development companies (BDCs) from FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and from paragraph (b) (Spinning) of FINRA Rule 5131 (New Issue Allocations and Distributions). The amendments maintain the integrity of the public offering process while facilitating vibrant capital markets by expanding access to initial public offerings (IPOs) through a highly regulated entity. The amendments will become effective on July 23, 2025.

The text of the rule change is set forth in [Attachment A](#).

Questions concerning this *Notice* should be directed to:

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- ▶ Ilana Herscovitz Reid, Associate General Counsel, OGC, by [email](#) or (202) 728-8268; or
- ▶ Britny Auletti, Assistant General Counsel, OGC, by [email](#) or (212) 858-4039.

#### Background & Discussion

Rule 5130 protects the integrity of the public offering process. Except as otherwise permitted under the rule, a member or a person associated with a member, may not sell a new issue to an account in which a restricted person has a beneficial interest; a member or an associated person may not purchase a new issue in any account in which such member or associated person has a beneficial interest; and a member may not continue to hold new issues acquired as an underwriter, selling group member or otherwise.<sup>1</sup> Further, before selling a new issue to

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#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Corporate Finance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ Business Development Companies
- ▶ New Issue Allocations and Distributions
- ▶ Restrictions on the Purchase and Sale of Initial Equity Public Offerings

#### Referenced Rules & Notices

- ▶ FINRA Rule 5130
- ▶ FINRA Rule 5131

any account, a member must in good faith have obtained within the 12 months before the sale, a representation from the account holder(s) or a person authorized to represent the beneficial owners of the account that the account is eligible to purchase new issues in compliance with Rule 5130.

Rule 5131 addresses conflicts and abuses in the allocation and distribution of new issues, including prohibiting the practice of “spinning,” which is the allocation of new issues by a member firm to an account in which a covered person that is the member firm’s current, former or prospective investment banking client has a beneficial interest.<sup>2</sup>

There are several general exemptions under Rule 5130(c), and, by reference, Rule 5131(b)(2). These include, for example, general exemptions for an investment company registered under the Investment Company Act of 1940 (Investment Company Act), and for a publicly traded entity listed on a national securities exchange. Traded BDCs are subject to the general exemption for publicly traded entities, but there is not currently a general exemption for non-traded or private BDCs.<sup>3</sup> Unless a general exemption applies,<sup>4</sup> non-traded and private BDCs would be required to represent that they are eligible to purchase new issues, which may not be feasible due to their size and operational structure.

FINRA has amended Rules 5130 and 5131 to create a general exemption for non-traded and private BDCs. The categorical exemption would apply to a BDC, as that term is defined in Section 2(a)(48) of the Investment Company Act, provided that for purposes of this exemption, the BDC is not formed or maintained for the specific purpose of permitting restricted persons to invest in new issues.<sup>5</sup> The categorical exemption for publicly traded entities would continue to apply to traded BDCs.

This new exemption will treat non-traded and private BDCs more similarly to investment companies registered under the Investment Company Act and to traded BDCs, for which there are general exemptions.<sup>6</sup> It will enable BDCs to more easily diversify their portfolios with new issues to the extent that such investments are consistent with all other applicable regulations.<sup>7</sup> By expanding access to IPOs through a highly regulated entity, the exemption maintains the integrity of the public offering process while facilitating vibrant capital markets.<sup>8</sup>

### Effective Date

The amendments will become effective on July 23, 2025.<sup>9</sup>

## Endnotes

- 1 The term “new issue” is defined as “any initial public offering of an equity security as defined in Section 3(a)(11) of the Securities Exchange Act of 1934, made pursuant to a registration statement or offering circular,” subject to a number of exceptions. See Rule 5130(i)(9). This term has the same meaning for purposes of Rule 5131. The term “restricted person” includes “members or other broker-dealers,” “broker-dealer personnel,” “finders and fiduciaries,” “portfolio managers,” and “persons owning a broker-dealer,” as those terms are defined in Rule 5130(i)(10)(A)-(E). The term “beneficial interest” means any economic interest, such as the right to share in gains or losses. The receipt of a management or performance-based fee for operating a collective investment account, or other fees for acting in a fiduciary capacity, shall not be considered a beneficial interest in the account. See Rule 5130(i)(1). This term has the same meaning for purposes of Rule 5131.
- 2 The term “covered person” refers to an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director. See Rule 5131(b)(1).
- 3 As used herein, “traded BDC” refers to a BDC with registered shares under the Securities Act of 1933 (Securities Act) that is publicly traded on a national securities exchange, “non-traded BDC” refers to a BDC with registered shares under the Securities Act that is not publicly traded, and “private BDC” refers to a BDC that is offered in a private placement. For purposes of this Notice, the term “BDC” refers generally to all types of BDCs. The exemption under Rule 5130(c)(5) for publicly traded entities would apply to traded BDCs.
- 4 A non-traded or private BDC may rely on the 10 percent *de minimis* exemption under Rule 5130(c)(4) or the 25 percent *de minimis* exemption under Rule 5131(b)(2) if they have collected restricted person and covered person information for their investors. However, due to their size and operational structure, FINRA believes that they may have difficulties determining whether restricted persons and covered persons meet the rules’ thresholds.
- 5 FINRA has also made a conforming change to Rule 5130(c)(6)(C) to add “or maintained” to make clear that under the exemption for investment companies organized under the laws of a foreign jurisdiction, the investment company cannot be formed *or maintained* for the specific purpose of permitting restricted persons to invest in new issues.
- 6 See Rule 5130(c)(1) and (c)(5).
- 7 Section 55(a) of the Investment Company Act requires at least 70 percent of the assets held by BDCs (other than non-investment assets used to conduct the BDC’s operations) to be in specified assets. Thus, only 30 percent of BDC assets can potentially be invested in new issues.
- 8 As part of the FINRA Forward initiative, FINRA published [Regulatory Notice 25-06](#) (March 2025) requesting comment on modernizing its rules, guidance and processes to further facilitate capital formation. FINRA will continue to review the comments received in connection with that Notice, including any comments related to Rules 5130 and 5131.
- 9 See Securities Exchange Act Release No. 103334 (June 26, 2025), 90 FR 28835 (July 1, 2025) (Order Approving File No. SR-FINRA-2025-001).

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